IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 30 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MARKAND D THAKAR

Versus

G P S C

Appearance:

MR VIKRAM THAKORE for MC BHATT for Petitioner

MS MANISHA LAVKUMAR, AGP for Respondents No. 1 to 3

Respondent No. 4-8 served

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 08/05/2002

ORAL JUDGEMENT

1. Heard learned Advocate Mr. Vikram Thakore on behalf of Mr. M.C. Bhatt for the petitioner and learned AGP Ms. Manisha Lavkumar for respondent - Government of Gujarat.

2. This Spl. Civil Application is filed for the writ of mandamus or any other appropriate writ, order or direction directing the respondents No. 2 and 3 i.e. State of Gujarat and Director, Technical Education, to make requisition for the name of the selected candidate from the waiting list for the post of Registrar, Government Polytechnic Colleges and for further direction to direct the respondents No. 2 and 3 to appoint the petitioner on the post of Registrar, Government Polytechnic College.

3. The facts go to suggest that the petitioner is Graduate and Post Graduate of the Gujarat University and in pursuance of a public advertisement dated 28.12.1988, the petitioner applied for the post of Registrar, Gujarat Education Service, Class-II. Ultimately, after processing the applications, a selection list as well as a waiting list were prepared. There were two candidates in the selection list while the petitioner was placed in the waiting list at No.1. It appears that the selection list was exhausted. At page 9, Annexure-A which is an intimation to the petitioner on behalf of the Public Service Commission, it is amply made clear that the name of the petitioner was included in the waiting list at Sl. No.1 and that list was to be operated only upto 18th January,1992. It was also made clear that this would not confer any right in the petitioner to be appointed.

4. Learned Advocate Mr. Thakore vehemently urged that though there are vacancies, the appointments are not being made from the waiting list. Learned Advocate fails to satisfy on the basic point that whether the petitioner is entitled to be appointed as of right because of his name is included in the waiting list at Sl. No.1.

5. The next contention which was urged regarding the action of the Government to be mala fide, illegal and ultra vires inasmuch as the vacancies were filled in by candidates giving promotion. It is urged that respondents No. 4 to 8 are promoted from the post of Office Superintendent to the post of Registrar and according to Rules, these posts are required to be filled in by reservations. It was also urged that the ratio of filling the vacancies 50% from the direct and 50% from the promotees also is not maintained and, therefore, it was urged that denying appointment to the petitioner is with ulterior motives of the government and with mala fide intention. It appears that the petitioner has

carried out amendment to the petition and has arrayed respondents No. 4 to 8 as parties in this petition.

6. Affidavit-in-reply filed by Prof. G.B. Vanza on 24th of June, 1992 makes it very clear that the stand of respondents No. 2 and 3 that promotion to respondents No. 4 to 8 to the post of Registrar is on purely stop gap and temporary nature. Therefore the fulfilment of ratio as laid down by Recruitment Rules would not be attracted. In this view of the matter, it is clear that the petitioner has failed to estalish that only because his name was included in the waiting list, a right is conferred upon him to be appointed as Registrar. Since there is no right vested in the petitioner and since vacancies have been filled by respondents No. 2 and 3 by way of stop gap arrangement, the action of the respondents No.2 and 3 cannot be labelled as mala fide, ulter vires or with ulterior motive. In this view of the matter, for this simple reason, the Special Civil Application filed for the mandamus or any other writ requires to be rejected.

8. The petition therefore stands rejected. Rule is discharged. No order as to costs.

(J.R. Vora, J.)
p.n.nair